STATE OF MICHIGAN

COURT OF APPEALS

PIERRE JACKSON, Plaintiff-Appellant, v ENTERPRISE LEASING COMPANY OF DETROIT, LLC, a Michigan Corporation, Defendant-Appellee.	UNPUBLISHED August 5, 2014 No. 314653 Wayne Circuit Court LC No. 11-013516-NI
TORY NIXON, Plaintiff-Appellant, v ENTERPRISE LEASING COMPANY OF DETROIT, LLC, a Michigan Corporation, Defendant-Appellee.	No. 318005 Wayne Circuit Court LC No. 11-003900-NF

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

In these consolidated cases, plaintiffs appeal the trial court's order that granted defendant's request for summary disposition. For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs Tory Nixon and Pierre Jackson were hit by a Ford Fusion on November 13, 2010, and suffered injuries. The car at issue was owned by defendant Enterprise, and defendant had rented the vehicle to Briana Buchanan from November 11, 2010 to November 13, 2010. Plaintiffs sued Enterprise for negligent entrustment in Wayne Circuit Court in two separate civil proceedings. Briana Buchanan, however, was not driving the car when it struck plaintiffs, and plaintiffs could not (or would not) identify the driver at fault—an element necessary to show

negligent entrustment. Accordingly, defendant moved for summary disposition in both cases, and the trial court granted these requests in January and May 2013.[1]

Plaintiffs appealed to our Court in 2013, and argue that the trial court erred when it granted defendant's motions for summary judgment. We consolidated their appeals for administrative reasons in October 2013.[2]

II. STANDARD OF REVIEW

A trial court's grant or denial of a motion for summary disposition is reviewed de novo. *Wilson v King*, 298 Mich App 378, 381; 827 NW2d 203 (2012). When a trial court considered "documentary evidence beyond the pleadings" and does not specify under which subrule it granted a motion for summary disposition, "we construe the motion as having been granted pursuant to MCR 2.116(C)(10)." *Cuddington v United Health Services, Inc*; 298 Mich App 264, 270; 826 NW2d 519 (2012). MCR 2.116(C)(10) states that a court may grant summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." Accordingly, the court must test "the factual sufficiency of the complaint" through consideration of "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The non-moving party "may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

III. ANALYSIS

"The tort of negligent entrustment is comprised of two basic elements. First, the entrustor is negligent in entrusting the instrumentality to the entrustee. Second, the entrustee must negligently or recklessly misuse the instrumentality." *Allstate Ins Co v Freeman*, 160 Mich App 349, 357; 408 NW2d 153 (1987) (citations omitted). In other words, "an owner or lender who entrusts a person with a dangerous instrumentality may be held liable to a third party who is injured by the negligent act of the entrustee, where the owner or lender knew, or could have reasonably been expected to know, that the person entrusted was incompetent." *Zokas v Friend*, 134 Mich App 437, 443; 351 NW2d 859 (1984).

Here, plaintiffs' claim of negligent entrustment has two obvious shortcomings. The first dispositive flaw is the most obvious: plaintiffs admitted that the entrustee—Briana Buchanan—was not driving the Fusion at the time it hit them. Nor do plaintiffs explain how Buchanan "negligently or recklessly misuse[d]" the vehicle, beyond an observation that her boyfriend was

[1] In each case, the trial court considered documentary evidence beyond the pleadings and did not specify under which subrule it granted defendant's motion for summary disposition.

[2] *Tory Nixon v Enterprise Leasing Company*, unpublished order of the Court of Appeals, entered October 4, 2013 (Docket No. 318005).

the last identified driver hours before the incident. *Allstate Ins Co*, 160 Mich App at 357. Plaintiffs, however, do not assert that Buchanan's boyfriend was driving the vehicle at the time of the incident—in fact, they state that they do not know who was driving the vehicle at the time of the incident.

More importantly, plaintiff has not explained how Enterprise acted negligently when it entrusted the Fusion to Buchanan on November 11, 2013, beyond general (and unsupported) accusations that Enterprise is engaged in a quasi-criminal conspiracy to rent cars to the associates and intimates of drug dealers.[3] These unsubstantiated assertions do not demonstrate that Enterprise was "negligent in entrusting the instrumentality" to Buchanan. *Allstate Ins Co*, 160 Mich App at 357.[4]

Accordingly, the trial court properly granted defendant's motion for summary disposition under MCR 2.116(C)(10).

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio

[3] In their briefs, plaintiffs allege that Enterprise forged documents on the car's return on November 13, 2010, to show that the Fusion had not suffered damage, and that Buchanan possessed auto insurance. Even if these allegations are true, they have nothing to do with the initial rental of the car by Buchanan on November 11, 2013. To demonstrate negligent entrustment, defendant would need to show that Enterprise was negligent when it entrusted the car to Buchanan—i.e., on November 11, 2010, not November 13, 2010.

[4] Plaintiffs also suggest that Enterprise is liable under a "general negligence" action separate from their claim for negligent entrustment, but this suggestion is merely another way of stating their claim for negligent entrustment. We need not address this attempt to use formalistic labels to manufacture other claims where none exist. See *Attorney Gen v Merck Sharp & Dohme Corp*, 292 Mich App 1, 9–10; 807 NW2d 343 (2011) (citations omitted) ("a court is not bound by a party's choice of labels. Rather, we determine the gravamen of a party's claim by reviewing the entire claim, and a party cannot avoid dismissal of a cause of action by artful pleading"). And, in any event, plaintiffs did not bring such a claim below. See *Polkton Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005) ("[g]enerally, an issue is not properly preserved if it is not raised before, addressed, or decided by the circuit court or administrative tribunal").